

Serial Number: 10/695,967  
Filed: 10/29/2003

**BARBLOCH IP**

### Remarks

The Examiner objected to the disclosure. The status of the parent application has been updated as suggested by the Examiner.

The Examiner rejected claims 1-13 and 15-17 under the judicially created doctrine of obviousness-type double patenting based on the parent application, now US Patent 6,686,829 and or US Patent 6,686,829 in view of additional references. As suggested by the Examiner, the attached Terminal Disclaimer with respect to US Patent 6,686,829 obviates each of these rejections.

The Examiner rejected claims 18 and 20-21 under 35 U.S.C. 103(a) as unpatentable over *Snodgrass* in view of *Itoh*. The Examiner admits that *Snodgrass* does not disclose use of Reed-Solomon code and supplies *Itoh* there for. However, *Itoh* is directed to elaborate TDMA and or CDMA digital voice cellular communications systems – not an electronic identification system as claimed (col. 3, ln. 45-55). In the "communication system" of *Itoh*, each base station and the various remote stations are essentially stand alone computers of considerable capacity and complexity capable of processing and transmitting digital data at rates/bandwidths that enable real-time digital voice communications. In contrast, the RFID system described by *Snodgrass* has "minimal complexity in circuitry, firmware and software" (col. 1, ln. 30-49) capable of transceiving a short data message at distances measured in feet rather than miles. These technologies are so completely different in their technical purpose and solutions that they cannot be considered analogous communications systems from which one skilled in the art would seek solutions between.

In each of the Examiners rejections based upon *Snodgrass* in view of *Itoh*, Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness. Obviousness

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cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital* 732 F.2d 1572, 1577 (Fed.Cir. 1984). Absent a showing in the prior art the Examiner has impermissibly used 'hindsight' occasioned by the applicant's teaching to hunt through the prior art for the claimed elements and combined them as claimed. *In re Zurko* 111 F.3d 887 (Fed.Cir.1997). Applicant respectfully directs the Examiners attention to MPEP 2143.01 and 2145 X.C. where the prima facie requirements for a rejection of this type, according to the official USPTO guidelines, is described in detail. Because the required motivation to combine the cited references fails to appear, rejection of claims 18 and 20-21 under 35 U.S.C. 103(a) is improper.

The Examiner rejected claims 14 and 19 under 35 U.S.C. 103(a) as unpatentable over *Snodgrass* in view of *Itoh* and *Denne*. As described herein above, the combination of *Snodgrass* in view of *Itoh* is improper. Therefore, because the required motivation to combine the cited references fails to appear, rejection of claims 14 and 19 under 35 U.S.C. 103(a) is improper.

Further with respect to claim 14: The Examiner only addresses with particularity the additional elements appearing in claim 14 but does not identify each and every element of the underlying independent claim 1 from which claim 14 depends. For example, the Examiner does not identify a disclosure, teaching or suggestion in the cited references that the forward error correctable data message includes transponder identifying base data as first symbol characters and other base data encoded as second symbol characters, each of the first symbol characters and second symbol characters also having first and second check characters, respectively. As each and every element of the claimed invention fails to be disclosed, taught or suggested in the cited references, rejection of claim 14 under 35 U.S.C. 103(a) is improper.

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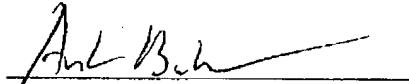
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Having obviated each of the Examiners rejections, applicant respectfully requests that a notice of allowance be issued. Should the Examiner be inclined to issue an Official Action other than the notice of allowance, Applicant respectfully requests that the Examiner first contact Applicant by telephone at the number listed below.

**Authorization of Deposit Account Charge**

The Commissioner is hereby authorized to charge the large entity statutory disclaimer 1.20(d) fee of \$110 and any other charges applicable to deposit account number 502327, referencing docket number 3031.

Respectfully submitted,



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**CERTIFICATE OF TRANSMISSION**

*I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office (Fax No 703 872-9306) on September 27, 2004.*

  
 Andrew D. Babcock